

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

**IN THE MATTER OF
MILTON F. MOROZOWICH,**

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Agency.

DOCKET NO. 98-12-139

**DECISION ON MOTION
TO DISMISS**

BEFORE Robert Burns, Vice-Chairperson, John F. Schmutz, Esquire, and John W. Pitts,
Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 *Del. C.* §
5908(a).

APPEARANCES:

For the Department:

Joelle P. Hitch
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801

For the Appellant:

Milton F. Morozowich, pro se

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BACKGROUND

On January 5, 1998 Milton F. Morozowich submitted an appeal to the Merit Employee Relations Board ("MERB" or "Board") in which he sought to appeal on his own behalf and on behalf of three (3) other individuals employed by the Department of Corrections as "Education Supervisors". Mr. Morozowich sought to appeal the employment practices utilized by the Department of Corrections under Merit Rule 19.0100, discriminatory practices by the agency; Non-Merit Factor; and Merit Rule 13.0100 Gross Abuse of discretion and others [Merit Rules] as applicable.

On May 27, 1998, the Department of Corrections ("DOC" or "Department") filed a motion to dismiss Mr. Morozowich's appeal asserting, among other things, that Mr. Morozowich is employed by the Department as a Teacher; that prior to July 16, 1997 he held the title "Education Supervisor"; that due to the FY97 Budget Acts there was a reorganization of the educational staff resulting in a new management structure with the "Education Supervisor" being returned to the classrooms as full-time teachers with no further entitlement to a teacher supervisor pay supplement.

The Department asserts in the Motion to Dismiss that this "grievance/complaint" was settled by the Union [The American Federation of State, County and Municipal Employees, AFL-CIO, Council 81, Local 247] on behalf of all of the Education Supervisors who were members of that Union. The Department attached to its motion a Memorandum dated November 25, 1997, the subject of which was "System Wide Teacher/Supervisor Grievance on behalf of Leroy Coit, Chuck Laws, Milt Morozowich, and Gene Stallings" and which set out the terms of the resolution of the grievance and which was executed by both the Union and by the Department of Corrections. The Department asserts that the subject matter of the appeal is covered by the collective bargaining

agreement; that this grievance/complaint was settled by the Union; and the settlement was accepted by the Education Supervisors by acceptance of the payment of the equivalent of one (1) year's supervisory supplement in two (2) installments under the agreement. The Department further asserts that reorganization from "Education Supervisor" to "Teacher" was neither a transfer between agencies nor a change in classification or pay grade and is covered in whole or in part by the collective bargaining agreement with the Union and therefore not subject to the Merit Rules or to the jurisdiction of the MERB. In the alternative, the Department claims that even if the matter were within the Board's jurisdiction, that there is no discrimination alleged based on any of the protected classes listed in Merit Rule 19.0100 and that the grievant was treated the same as all Education Supervisors affected by the reorganization which occurred pursuant to the 97' and 98' Budget Acts when the Department of Corrections contracted with New Castle County Vo-Tech for educational management services which resulted in the reorganization.

Mr. Morozowich did not provide a written response to the Department's motion. The matter was scheduled for argument on the Motion to Dismiss before the Board on November 12, 1998. Mr. Morozowich appeared at the argument pro se and being advised of his right to be represented by legal counsel, presented oral argument on his own behalf. The Department of Corrections was represented by Joelle P. Hitch, Deputy Attorney General. This is the decision of the Board on the Motion to Dismiss.

DISCUSSION

In 1997, the Department entered into a contract with New Castle County Vo-Tech to provide educational supervision within the Department of Corrections. This resulted in the existing group

of Education Supervisors, including the Appellant, being returned to the classroom as full-time teachers with the loss of their additional compensation or "supervisor's supplement". This reorganization was the subject of a grievance brought by the Union on behalf of the Education Supervisors, all of whom were members of the Union. Ultimately, the Union and the Department entered into a settlement of the grievance which, among other things, provided for payment in two (2) installments of one (1) year's supervisory supplement and the agreement that each grievant was allowed to use the title of Educational Supervisor through June 30, 1998 only for application purposes, and only when making application outside of the Department of Corrections.

The individuals who were Education Supervisors, according to the Appellant, are not satisfied with the Union's settlement of this matter and seek to have the MERB consider the subject matter of the grievance which was resolved on their behalf between the Department and the Union. Mr. Morozowich acknowledged that he was attempting to bring this appeal to the Board on his own behalf as a former Education Supervisor recognizing that there were three (3) other individuals similarly situated. The Board therefore finds it unnecessary to address the Department's objection to the appeal as an improper "class action".

This reorganization or change in the circumstances of the Education Supervisors is a matter which the Board finds to be within the purview of the Collective Bargaining Agreement under 29 *Del. C.* § 5938 and indeed it was the subject of a grievance by the Union which was settled by the Union on behalf of its members with the Department of Corrections. Under the circumstances, the matter is not within the purview of the Merit Rules as a grievance nor within the jurisdiction of the Board and the Motion to Dismiss is granted.

ORDER

The Motion to Dismiss the above-captioned matter having been considered by the Board, for the reasons set forth above, is hereby **GRANTED. THE APPEAL IS DISMISSED.**

BY ORDER OF THE BOARD:

Susan L. Parker, Esquire, Chairperson¹

Robert Burns, Vice-Chairperson

Dallas Green, Member²

John F. Schmutz, Esquire, Member

John W. Pitts, Member

APPEAL RIGHTS

29 Del. C. § 5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court are to be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 Del. C. § 10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

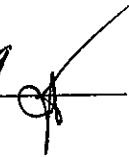
(b) The appeal shall be filed within thirty (30) days of the day the notice of the decision was mailed.

¹Susan L. Parker, Esquire, voluntarily recuse herself from this matter because of pending litigation wherein her law firm represents interest against the Delaware Department of Corrections.

²Dallas Green was unavoidably absent from the argument and deliberations concerning this matter.

(c) The appeal shall be on the record without a trial *de novo*. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing Date: 2/3/99 

Distribution:

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Agency's Representative

Merit Employee Relations Board

Susan L. Parker, Esquire, Chairperson

Robert Burns, Vice Chairperson

Dallas Green, Member

John F. Schmutz, Esquire, Member

John W. Pitts, Member